IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 518 of 1999.

Reserved on: 25.5.2007.

Date of decision: 29.5.2007.

State of H.P. ... Appellant

Versus

Kala & Ors. … Respondents

Coram :

The Hon'ble Mr. Justice V.K. Ahuja, Judge.

Whether approved for reporting?[1] No.

For the appellant: Mr. Ashutosh Burathoki, Additional Advocate General.

For the respondents: Mr. Rajiv Jeewan, Advocate, for respondents No. 3 & 4.

V.K. Ahuja, J.:

This appeal has been filed by the appellant/State of H.P. against the judgment of the Court of learned Chief Judicial Magistrate, Kullu, dated 13.7.1999, vide which the respondents were acquitted of the charges framed against them under Sections 342,323,325,506 read with Section 34 I.P.C.

Briefly stated the facts of the case are that on 16.7.1995 at 11.3-PM, a statement was made by one Jagat Ram before the Police Officer under Section 154 Cr.P.C. that today in the evening when the complainant was coming to his house and he reached near the house of respondent/accused Kala at 7.00PM, a dog came to bite him and in his

[1]Whether reporters of Local Papers may be allowed to see the judgment? Yes.

defence, he threw stones upon the said dog. At this instance, Kala came out of the house and started giving beatings to him and thereafter, the ladies from the house of Kala and his sons came out and attacked him with danda and gave legs and fists blow and he suffered injuries on the parts of his body. It was further alleged that thereafter, said Kala tied his left hand with a tree and Rs.600/- lying in his pocket were misplaced. He was rescued by Brijender Singh, Pradhan of the Gram Panchayat who removed the rope. On this report, a case was registered and after investigation, the challan was filed under the above sections. The respondents were tried under the above sections leading to their acquittal as detailed above.

I have heard Mr. Ashutosh Burathoki, learned Additional Advocate General for the appellant and Mr. Rajiv Jeewan, Advocate, for respondents No. 3 and 4 and have also gone through the record.

The submissions made by the learned Additional Advocate General were that the statement of the complainant had been duly corroborated by medical evidence and there are no material contradictions or infirmities in the statements of the prosecution witnesses which were wrongly not relied upon by the learned trial Court, which findings are not correct and as such, are liable to be reversed.

On the other hand, the learned counsel for the respondents submitted that the complainant's statement has not been corroborated by other witnesses examined by the prosecution. It was also submitted that there is substance in the defence plea raised by the accused persons that since the accused Kala was not present in his house and complainant while going to his house has misbehaved with the ladies of his family and, therefore, his hand was tied with the tree. It was also

submitted that since the complainant was heavily drunk he could not remove the rope with his right hand and there was no occasion for the accused persons to give beatings to the complainant in case he had thrown a stone upon the dog and since there is no evidence that the dog belonged to the accused party. It was submitted that once two views are possible from evidence and the one taken by the learned trial Court cannot be said to be incorrect and there has been no misreading of evidence and the view taken by the learned trial Court cannot be said to be perverse and as such, the findings of the learned trial Court call for no interference by this Court.

Coming to the evidence, it is clear from the allegations in the statement under Section 154 Cr.P.C. Ext.PW1/A, the complainant has alleged that he had thrown a stone upon a dog to save himself, but he nowhere alleged that the dog belonged to the accused party or it had hit any member of the accused party and further alleged that Kala came there, gave him blows with fists and legs amd thereafter, his family members also came out and gave beatings to him. I have mentioned this fact to show that since there is no evidence to show that the dog belonged to the accused or the stone had hit any member of the family of Kala, where was the occasion for Kala to come out and give beatings to him and for his other family members to give beatings to the complainant and later on tie his left hand with the tree. Therefore, the evidence led by the prosecution has to be taken with more care and caution in view of these observations.

PW-1 Jagat Ram has reiterated the assertions made in the statement made by him to the police under Section 154 Cr.P.C. He has stated that his nephew had gone to call the police and he did not go to

the hospital on the same day. A suggestion was put to him that he had not gone to the hospital on that day since he was under the influence of liquor and he denied the suggestion and further stated that what is the proof that he had taken liquor. This shows that it may be in his mind that in case he had gone to the hospital, there will be proof against him for having taken liquor, since this statement was made by him voluntarily. He denied that he fell down and suffered injuries by a fall. He admitted that there are two houses near the house of Kala. He admitted that he was taken to his house by catching him but he denied that he was taken by his family members in this manner since he was under the influence of liquor.

PW-2 Raghuvir Singh has stated that on 16.7.1995 in the evening at 8.00P.M. he learnt from Gehru Ram that his uncle had been beaten and had been tied with a tree. He went to the house of Kala where Pradhan and family members of Kala and his neighbours were present. The blood was oozing out of the person of uncle and his shirt was torn and was weeping and had been tied with a tree. They brought back their uncle and rope was removed. He had not witnessed the occurrence, therefore, his statement is not material though it corroborates partly that the complainant was found tied with a tree in the house of Kala. PW-3 Sneh Lata learnt from Gehru Ram that his father-in-law had been tied by Kala Ram and his family members and blood was oozing out of his nose. The Pradhan came and rescued her father-in-law but told them that there was a quarrel regarding a dog. She further stated that accused persons were present there.

PW-4 Brijnder Singh, Pradhan has stated that Rami Devi wife of Kala came to his house and told him that Jagat Ram had come

to their house and had been quarreling and he had been tied in the house. He went to the house of Kala where Jagat Ram was tied with one hand in the tree and many persons were present there and he released said Jagat Ram who had scratches on his face and the blood was oozing out. He stated that he learnt from Jagat Ram that when the dog barked upon him, he threw a stone upon the dog on which the accused persons quarreled with him. He further stated that Jagat Ram had told him that her husband was not present in the house but had gone to the temple. He went to the house of Kala who was not present there but came there after 10-15 minutes which shows that there is substance in the plea raised that the accused Kala was not in the house of the complainant and may have misbehaved with the ladies for which he had been tied with a rope.

PW-5 Dr. G.D. Gour had conducted x-ray examination of the complainant and found that there was a fracture of nasal bone. He admitted that this injury was possible by fall also. PW-7 Dr. Promila Vaidya had examined the injured and issued MLC. There were bruises on the person of the complainant and one lacerated wound on the right side of scalp towards forehead. She has observed five bruises on the person of injured and one lacerated wound on the right side of scalp towards forehead, whereas PW-5 Dr. G.D. Gour, Radiologist had observed that fracture of nasal bone was detected. Therefore, there is no corroboration from the statements of the medical officer examined by the prosecution. The other witnesses were of formal nature except PW-10 Gehru Ram who when examined had not supported the prosecution though he was stated to be an eye witness.

From above discussion of the evidence, it is clear that there was no occasion for the accused party to give beatings to the complainant and the manner in which the occurrence is alleged to have taken place does not inspire confidence that it was the truthful version of the complainant. The learned trial Court had referred to the contradictions in the statements of the witnesses and had concluded that the prosecution case was highly doubtful and accordingly, had acquitted the respondents of the charge framed against them. A perusal of the evidence led by the prosecution clearly shows that the evidence is not such upon which implicit reliance can be placed so as to hold the respondents guilty of the charge framed against them and the view taken by the learned trial Court cannot be said to be perverse called for an interference by this Court and as such, there is no merit in the appeal which deserves to be dismissed and is dismissed accordingly. Bail bonds stand discharged forthwith. A copy of the judgment along with record be sent to the concerned Court.

(V.K. Ahuja),
Judge

May 29, 2007
(BSS)